



# Listers and the Law

Property Valuation and Review, Lister Education

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# Now for the Program

- Topics
  - Sources of the Law
  - How to find the law
  - Understanding the application of the law
  - The Court system and the application of the law
  - A survey of the laws applicable to listing property
  - A study of exemptions
  - Appeals of tax assessments

# The Question

- Where does the power to create law come from?



The Answer

# Sources of the Law

- The Federal Constitution
- The State Constitution
- Federal and State Legislatures
- Federal and State Courts
- Federal and State Executive
  - Agencies, Departments, Commissions

# Focus on Vermont

- The Vermont Constitution
  - 1777 – Independence
  - 1786 – First Revisions
  - 1791 – Statehood
  - 1793 – Current Constitution

# Article 6

- The government is of, by and for the people:
- *"all officers of government, whether legislative or executive, are their trustees and servants; and at all times, in a legal way, accountable to them."*

# Article 9

- Article 9. [Citizens' rights and duties in the state; bearing arms; taxation]
- *That every member of society hath a right to be protected in the enjoyment of life, liberty, and property, and therefore is bound to contribute the member's proportion towards the expense of that protection, . . . and previous to any law being made to raise a tax, the purpose for which it is to be raised ought to appear evident to the Legislature to be of more service to community than the money would be if not collected.*

# Implementing the Constitution

- Legislature creates statutes
- Process?

# Thought to Statute

- Step 1. Idea
- Step 2. Drafting
- Step 3. Introduction
- Step 4. Assigned to committees
- Step 5. Hearings, discussion, reports
- Step 6. Repeat
- Step 7. Action on the floor
- Step 8. Send to the other body
- Step 9. Repeat steps 4, 5, 6, 7, 8
- Step 10. Conference
- Step 11. The Governor

# Finding the Statutes

- Legislature.vermont.gov
  - Free but unofficial site
  - Good way to quickly find statute
  - Search tool
- LexisNexis Source
  - <http://www.lexisnexis.com/hottopics/vtstatutesconstctrules/>
  - Connect via the Vermont Legislature site

# More Ways to Find Statutes

- Reference in another work
  - Lister's Handbook
- Google works – sometimes
- Green Books – Vermont Statutes Annotated
  - Index
  - Pocket Parts
- Friendly lawyer or law student

# Legislature.vermont.gov



# Everybody has a Disclaimer

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## Vermont Statutes Unannotated and Vermont Court Rules

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**TITLE ONE. GENERAL PROVISIONS**

**TITLE TWO. LEGISLATURE**

# Keywords

- Online statutes searched by keywords
  - Just like Google.
    - Wrong words = wrong results
    - Too narrow vs. too broad
  - Key is synonyms and assessing the results

# Statutory Citations

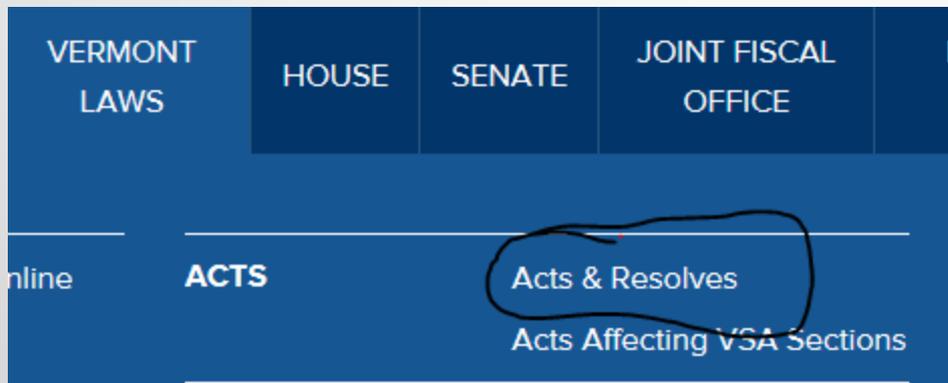
- 32 VSA §3802(11)(A)(i)
- 32 refers to the Title
- VSA or V.S.A. are the Vermont Statutes Annotated
- USC or U.S.C. is the United States Code, add an “A” and get the annotated version
- § is the typography symbol for “section” – usually the main body of the statute

# Citations - continued

- (11) refers to a subsection within the main section
- (A) and the (ii) designate a list within the subsection.
- The “a” in 32 V.S.A. §3802a identifies a section inserted later, without renumbering the Chapter.

# Session Laws

- The official text of the Acts passed by the Legislature
- <http://legislature.vermont.gov>



- Published in paper form

# Finding a Session Law

**VERMONT GENERAL ASSEMBLY**

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2015 - 2016 Legislative Session

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ACT #	SUMMARY	TITLE	KEYWORDS
Act 1 (H.16)	Act Summary	An act relating to requiring an inmate to report to the Sex Offender Registry prior to release from a correctional facility	Corrections; Crimes; Criminal Procedure; Sex offenders; crimes and criminal procedure; sex offender registration; crime victims; reporting upon release from confinement or supervision; Sex Offender Registry

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# Legislative History

- When did the law change?
- How did the law change?
- When did the change take effect?
  
- An example ->

• *Amended 1959, No. 62, eff. March 26, 1959*; 1961, No. 216, §§ 1, 2, eff. July 13, 1961; 1962, No. 3 (Sp. Sess.), § 1, eff. Aug. 2, 1962; 1963, No. 23, eff. March 28, 1963; 1963, No. 29, eff. April 2, 1963; 1963, No. 30, eff. April 2, 1963; 1963, No. 147; 1964, No. 16 (Sp. Sess.); 1965, No. 33, eff. April 20, 1965; 1966, No. 21 (Sp. Sess.), § 2, eff. March 3, 1967; 1967, No. 156, eff. April 15, 1967; 1971, No. 28, eff. Jan. 1, 1972; 1973, No. 9, § 1, eff. date, see note set out below; 1973, No. 91, eff. for the tax year beginning April 1, 1974 and thereafter; 1975, No. 101, § 3, eff. April 30, 1975; 1975, No. 160 (Adj. Sess.); 1977, No. 16, § 2, eff. March 22, 1977; 1977, No. 71, § 1, eff. date April 23, 1977 (first be effective for property taxes assessed for the year 1977); 1977, No. 170 (Adj. Sess.); 1977, No. 172 (Adj. Sess.); 1981, No. 70, eff. May 1, 1981; 1981, No. 222 (Adj. Sess.), § 10; 1987, No. 76, § 18; 1987, No. 147 (Adj. Sess.), § 1, eff. April 13, 1988; 1989, No. 26; 1991, No. 43; 1991, No. 187 (Adj. Sess.); 1991, No. 203 (Adj. Sess.), § 1, eff. May 27, 1992; 1993, No. 134 (Adj. Sess.), § 1, eff. April 26, 1994; 1995, No. 3, § 1, eff. March 9, 1995; 1995, No. 105 (Adj. Sess.), § 1; 1999, No. 49, § 44, eff. June 2, 1999; 1999, No. 91 (Adj. Sess.), § 23; 2005, No. 38, § 28; 2005, No. 207 (Adj. Sess.), § 25, eff. May 31, 2006; 2007, No. 190 (Adj. Sess.), § 23, eff. June 6, 2008; 2009, No. 1 (Sp. Sess.), § H.28, eff. June 2, 2009; 2011, No. 45, § 13g, eff. May 24, 2011; 2011, No. 111 (Adj. Sess.), § 1, eff. May 8, 2012; 2011, No. 127 (Adj. Sess.), § 2, eff. Jan. 1, 2013; 2013, No. 73, § 27, eff. June 5, 2013; 2013, No. 73, § 28, eff. Jan. 1, 2014; 2013, No. 174 (Adj. Sess.), §§ 26, 69, eff. Jan. 1, 2015; 2013, No. 200 (Adj. Sess.), § 21a; *2013, No. 200 (Adj. Sess.), § 22, eff. Jan. 1, 2017.*)

# Example

- Example 1. Find the statute applicable to Agency of Natural Resources Land.
- Is this a good question?
- What is the citation?
- Example 2. Find the statute that tells how to assess “housing trust” properties.
- What is the citation?



# Part II Reading and Applying Statutes

# The Words

- Words may have their ordinary meaning; or,
- Words may be defined as having a special meaning.
- <sup>1</sup>VSA Chap. 3 – definitions that apply throughout the statutes, unless they don't
- Definitions may appear in a specific chapter or subchapter, sometimes even in a section

# Goals or Presumptions

- Defined words are used consistently throughout a statute.
- If not defined, then the common meaning

# Statutory Interpretation

- Only for Judges and Lawyers – No
- But be cautious if there will be adverse consequences – check with someone
- Plain and ordinary meaning
- Use the definitions
- Resist creating absurd results
- Give effect to all parts of statute – avoid giving application to one ignoring another



# Part III – Regulations

The Executive Branch Contribution

# Regulations

- Detailed application of the statutes
- Adopted by agencies, departments, boards and commissions
- Administrative Procedures Act

# Process (generally)

- Statute directs/authorizes agency, department, or commission to develop rules or regulations
- Personnel prepares draft regulations
- Circulates through drafting group
- Published for comment
- Referred to ICAR
- Sent to LCAR
- Adopted and final regulation published

# Finding Regulations

- Website of issuing agency, department or commission
  - E.g. Tax Dept. regulation 1.4041(a) required reappraisals
  - <http://tax.vermont.gov/research-and-reports/legal-library/regulations>
- Published resources



# Part IV- The Common Law

The Judiciary's Contribution

# History of the Common Law

- Decisions from English courts imported during colonial times
- Well developed principles adopted
  - Then adapted

# Development of Common Law

- Key principle of the common law
  - *Stare decisis*
  - *Once established a principle of law is applied in future cases with similar facts*
- Judges research and apply law from prior cases to current controversies
- Common law “stable” and “predictable” to the extent judges apply the principle

# Court System

- Disputes first heard in trial court
  - Or perhaps – Administrative forum or in a quasi-judicial proceeding
- Specialized divisions within trial court system
  - Civil Division
  - Criminal Division
  - Probate Division
  - Environmental Division

# Court Case Process

- Initial pleadings (written description of complaint and answer)
- Motion practice (addresses preliminary matters)
- Discovery (each side finds out about the other's case)
- Trial
- Post-trial motions

# Trial Court Decisions

- May come from a judge (bench trial or by motions)
- May come from a jury decision
- Don't like the decision – appeal to a higher authority (court)
- Vermont has one level of appellate court
  - The Supreme Court

# Proceedings in Supreme Court

- Only matters of law decided by Supreme Court
  - Uses the facts developed at trial court level
- Notice of Appeal
- May be – stay of trial court decision
- Briefing (written arguments about the law and application of law to facts)
- Argument (oral argument before the Justices)
- Decision (published or unpublished)

# Finding Court Cases

- Vermont Judiciary Website
  - [www.vermontjudiciary.org](http://www.vermontjudiciary.org)
  - <https://www.vermontjudiciary.org/supreme-court>
- Google {General} or Google Scholar
  - Try “Vermont” and the name of the case
  - Example: Rassmussen VERMONT
- Friendly lawyer or law student

# Google Scholar For Vermont Cases

<https://scholar.google.com/>



# Citations to Cases

- *American Museum of Fly Fishing, Inc. v. Town of Manchester*, 557 A.2d 900, 151 Vt. 103 (Vt. 1989)
- Parties Names
- Volume 557 – Atlantic Reports 2<sup>nd</sup>; Page 900
- Volume 151 - Vermont Reports (brown books) Page 103
- Date of Decision - 1989

# Extracting the Law from A Court Case

- See, *Rasmussen v. Town of Fair Haven*
- Read decision all the way through
- Identify the facts the Court relies upon
- Look for the statute, case law or rule that is the basis for the decision.
- See whether the Court follows the rule or proceeds to fashion a new rule
- Do all the Justices agree – is there a dissent

# Types of Decisions

- Upheld – the lower court or administrative decision is approved and left alone
- Remanded – the Supreme Court orders the trial court or administrative decision maker to apply a different legal concept to the facts
- Reversed – the lower court or administrative decision was wrong and a new outcome or a new trial is necessary

# A Word of Caution

- Just because you found a case
  - Doesn't mean it is still the current law
  - Is the only Case
  - Explains the law completely
- Best to get help from an experienced legal researcher
- Cases sometimes overrule or change a prior ruling –
- Be Careful Out There

# Light Hearted Interlude

- A case involving Listers but not the value of property

STATE of Vermont  
v.  
Cindy L. SCHOFNER and Peter C. Tripp.  
No. 99-541.  
Supreme Court of Vermont  
May 2, 2002.

- **174 Vt. 430, 800 A.2d 1072 (Vt. 2002)**
- In May 1999, two tax listers for the town of Walden were examining property for appraisal purposes. While conducting this appraisal, they noticed a new addition on the neighboring house, which belonged to defendants. The addition had not been part of defendants' property appraisal in the past. To determine the value of the addition, the listers entered defendants' property and proceeded to the house. They knocked on the front door, but found that no one was home. They then walked around the perimeter of the house and measured the size of the addition.



# An Example of the Development of a Law

Covenant Restricted Housing

# Before “Franks”

- How was covenant restricted housing assessed?
  - >>
  - Or
  - >>

# Franks v. Town of Essex Rockingham Area Community Land Trust v. Rockingham

- Court's Ruling
  - Have to assess each property and the impact of the covenant, if any
  - Dissent – strict application of the statutory definition of appraisal value as fair market value, including the likelihood that the covenant would have an impact

# And the Response

- Ink barely dry on Court's Opinion when
- New legislation introduced
- Result is 3481 (1) (C)
  - Covenant is deemed to have an impact of between 30% and 40% of value
  - Last minute proposal – not adopted – value “up to” 70% of the full value



Part VI – Survey of the Law  
relating to the Assessment of  
Property for Tax Purposes

# Overview – Title 32

- Chapter 121 – General Provisions
  - PVR – Obligations, Duties, Powers
  - 3411 (3) authorizes PVR to adopt rules
  - 3431 – Lister’s Oath
  - 3432 – Assistance to Director
  - 3436 – Assessment Education – or why you are here today

# Key Definitions

- 3481
  - (1) (A) Appraisal Value
  - (B) Covenant Restricted Rental Housing
  - (C) Covenant Restricted Housing
  - (D) Renewable Energy plant – solar
- 3484 –
- 3485 – Clerk's obligation to provide PTTR's

# Chapter 123 – How, Where &tc

- Various special kinds of property
- See examples
- Perpetual Leases – new hot topic in real estate world
  - Note 3610(b) “list every perpetual lease in a separate record”
- 3621 – Petroleum and Natural Gas Projects
- 3659 – Municipal Lands located outside the bounds of the Municipality owning the lands

# More on Chapter 123

- Computation of PILOT payments
  - State owned buildings
  - Note definitions in 3701
- Computation of ANR lands payments
  - 3708

# Chapter 129

- 4001 to 4088 – deals with inventories required to be provided by taxpayers
- 4111 – Abstract of the Individual Lists
  - General Form
  - Certification
  - Notice to taxpayers whose assessment changed
  - Grievances
- 4112 – 4116 - Correcting a defective list

# Chapter 129 - Continues

- Grand List
  - Oath by each lister attached to Grand List
  - Certification by Clerk

# Contents of Grand List

- 4152
  - (6) – Insurance replacement value or full listed value (and which value is identified)
  - (7) good example of one statute referring to others – must review them all
- 4154a
  - Report to the selectboard the percentage of acreage within the municipality owned or controlled by ANR

# More from Chap 129

- 4155-4157
  - Certification required
  - *Prima facie* evidence of validity of Grand List
- 4158 –
  - Replace a lost or destroyed grand list
  - **Digress into Information Security**

# Correcting Grand List

- 4261 - Before 12/31 correct mistakes, omissions, and obvious errors with the approval of the selectboard
- 4262 – Correcting errors in the formalities of the adoption of the grand list

# Part VII - Exemptions

- Chapter 125
  - 3800 – Statement of purposes of exemptions
  - 3802 – Statutory exemptions
    - The hardest words in the Chapter –
    - *Real and personal estate granted, sequestered or used for public, pious or charitable uses*
    - *But there are limitations in 3832.*

# Public Use Test

- [The "Fly Fishing Case"](#)
- The essential language
- *Before a property is entitled to tax-exempt status as a public use, it must meet certain criteria, as follows: (1) the property must be dedicated unconditionally to public use; (2) the primary use must directly benefit an indefinite class of persons who are part of the public, and must also confer a benefit on society as a result of the benefit conferred on the persons directly served; and (3) the property must be owned and operated on a not-for-profit basis.*

# More Exempt Properties

- Churches (but not just churches)
- Libraries
- Veterans Exemption
  - with special requirements
- Federally qualified health center or federally designated health clinic (subject to limitations).
- Railroads

# Restricted Exemptions

- Colleges, universities and fraternity property
- 3832 - What are NOT public, pious or charitable uses

# Voted Exemptions

- Be careful of time limits –
  - Identify when exemptions must be voted again
- Factories, Quarries and Mines
- Homes and dwellings constructed in the preceding 12 months
- Airports
- Hotels (special requirement related to grand list value)
- Volunteer fire and ambulance services (10 yr with 5 yr renewal)

# A Test For You

- Apply the clear and easy rules for determining if a property is exempt from property taxes

# The Facts

- A college owns several buildings in this municipality.
- Some of the buildings are used for education
- One of the buildings is leased to the State for non-education purposes
- Should the building leased to the State be exempt?

# Some More Facts

- About  $\frac{1}{3}$  of the building space is used for storage and the school telephone system.
- The rest of the building is leased to the State.
- The structure of the building and space did not change, rooms are similar to when building used for school.



What questions should you ask?

# What law applies?

- 32 VSA 3802(4)
- What are the relevant provisions?

## § 3800. Statutory purposes

- (b) The statutory purpose of the exemption for public, pious, and charitable property in sections 3832 and 3840 and subdivision 3802(4) of this title is to allow these organizations to dedicate more of their financial resources to furthering their public-service missions.

## 32 VSA 3802(4)

- 4) Real and personal estate granted, sequestered or used for public, pious or charitable uses; real property owned by churches or church societies or conferences and used as parsonages and personal property therein used by ministers engaged in full time work in the care of the churches of their fellowship within the State; real and personal estate set apart for library uses and used by the public and private circulating libraries, open to the public and not used for profit; lands leased by towns or town school districts for educational purposes; **and lands owned or leased by colleges, academies, or other public schools** or leased by towns for the support of the gospel; and lands and buildings owned and used by towns for the support of the poor therein; but private buildings on such lands shall be set in the list to the owners thereof, and shall not be exempt. *The exemption of lands owned or leased by colleges, academies, or other public schools, shall not apply to lands or buildings rented for general commercial purposes, nor to farming or timberlands owned or leased thereby; but this provision shall not affect the exemption of so-called school or college lands, sequestered to such use prior to January 28, 1911.*



And your decision is?

# And now for another brain bender

- A museum for the preservation of the art of making fine writing instruments and offering master craftsman classes
- Owned by two corporations, one a 501(c) Educational Institution and one by a Vermont non-profit corporation
- An historic house with several rooms, two dedicated to displays about crafting writing instruments through the ages
- Several remaining rooms used as workshops for classes on crafting writing implements
- Two rooms set aside for the custodian's living quarters
- Small admission charge to the museum.
- Classes presented for tuition payments.
- Students taking classes must demonstrate some skill in crafting writing instruments – portfolio of work for example



And your decision is?

# Appeals

- Following Grievances
- Appeal to the Board of Civil Authority
- Notice of Appeal to the clerk
  - Briefly set forth grounds of appeal
- BCA Committee to inspect the property
  - Taxpayer must allow the inspection of the property – *Rasmussen*
- Listers may defend their appraisals

# Defending the Appraisal

- What techniques are effective to defend an appraisal?

# Appeal from BCA Decision

- To PVR
  - By the taxpayer or by the Selectboard
  - Notice to be filed within 30 days of BCA decision
    - Time is of the Essence
- 4463 – Any party (taxpayer, selectboard, town agent) may **OBJECT** to an appeal that was “in any manner defective or not lawfully taken”
- Objections must be in writing

# Objection to Appeal

- At least one party must ask for a hearing or no hearing is required
- Director must assess the validity of the objection and make a decision
- Person filing the appeal may withdraw an appeal

# Hearing Officer

- Has the power to subpoena documents, records and witnesses
- Hearings are contested cases under the Administrative Procedures Act
- Hearings are *de novo* –
  - *All new* – proceedings before the BCA are not part of the appeal
  - *Must prove the whole "case" again.*
  - Hearing office must inspect the property

# Burden of Proof in an Appeal

- [¶7] In an appeal to the state appraiser, a town's property appraisal is presumed to be valid and legal. *City of Barre v. Town of Orange*, [152 Vt. 442](#), 444, [566 A.2d 951](#), 952 (1989). If the taxpayer introduces evidence that his or her property was assessed above fair market value, the presumption disappears. *Vanderminden v. Town of Wells*, 2013 VT 49, ¶ 8, [194 Vt. 96](#), [75 A.3d 598](#). It is then up to the town to introduce evidence showing " either that it substantially complied with the relevant statutory and constitutional requirements or that its valuation was supported by independent evidence of fair market value." *Id.* ¶ 8 (quotation omitted). The taxpayer has the ultimate burden of proving that the appraisal was incorrect. *Adams v. Town of West Haven*, [147 Vt. 618](#), 620 n. \*, [523 A.2d 1244](#), 1245 n. \* (1987).
- *Vermont Transco LLC v. Town of Vernon*, 109 A.3d 423, 2014 VT 93A (Vt. 2014)

# Hearing

- Both sides present evidence
  - Burden of proceeding vs. burden of proof
- Correct valuation as required by applicable law and correspond to value of comparable properties
  - Must present evidence on both points

# Appeal of Hearing Officer Decision

- Hearing officer decision appealable
  - To Supreme Court
  - On legal issues, facts based on Hearing Officer's report of the facts
  - Important to get all appropriate facts in the record

# The End

- Any final questions?